

ADMINISTRATIVE
INTERNAL USE ONLY

15 JUN 1978 78-2042/3

MEMORANDUM FOR: Deputy Director for Administration

FROM: James H. McDonald
Director of Logistics

SUBJECT: Security Provisions in Agency Contracts

REFERENCES: (a) Memo to DDA, dtd 15 May 78, fm DCI,
no subject (ER 78-1465)

(b) Memo to DCI, dtd 1 Jun 78, fm DDA,
no subject (DD/A 78-2042/1)

(c) Memo to DDA, dtd 6 Jun 78, fm DCI,
Subject: Contracting Procedures on
Security (ER 78-1465/3)

1. Action Requested: It is requested that the attached memorandum be signed and forwarded to the DCI via General Counsel. Said memorandum is intended to comply with the DCI's request for stronger contract language on enforcement of security provisions. It is also requested that you approve the recommendation in paragraph 3 that the proposed clause be circulated among selected CIA contractors for comment.

2. Background:

STATINTL

As a result of the [REDACTED] incident, substantial concern developed regarding inept language in our contracts for enforcement of security provisions. Since that time, a Task Force on Industrial Security and Industrial Contracting has performed a study and recommended various actions in the general areas of industrial security and industrial contracting.

STATINTL

Since very early in the aftermath of the [REDACTED] incident, the DCI has sought some means of penalizing contractors for nonperformance in the area of security. Both the Task Force and the Office of General Counsel representative have concluded that without additional legislation we have only the limitations existent in contract law available to us for enforcement of contract terms. One of the recommendations of the Task Force, of course, was that the Office of Legislative Counsel (OLC) seek new legislation which would allow the DCI to penalize contractors for security violations.

OL 8 2541a

ADMINISTRATIVE
INTERNAL USE ONLY

~~ADMINISTRATIVE~~
INTERNAL USE ONLY

SUBJECT: Security Provisions in Agency Contracts

Reference (a) queried the status of ". . . when we're going to get some teeth into our contracting" Reference (b) provided a status report to the DCI on actions taken to date and noted the fact that, without a rewrite of security manuals, stronger contract language would be ineffective. Reference (c) expressed the DCI's thought that, while updating and rewriting security manuals is worth doing, he is especially interested in a "performance" clause that would make a contractor subject to penalty in the event security information is leaked out of his organization.

3. Staff Position:

We continue to believe that, without new legislation, existing authorities of the DCI do not facilitate punitive action for contractor security violations. To correct this situation, it may be worthwhile to ask OLC to pursue the Task Force recommendation that new legislation be sought which would allow stronger action by the DCI in the event of contractor security violations.

A clause has been developed which is much stronger than any we have heretofore included in our contracts. It highlights the importance of security performance and makes it clear that a failure to perform in the area of security will subject the contractor to immediate termination for default, without the requirement for a 10-day cure notice. As noted in the memorandum to the DCI, which we have prepared for your signature, we have been unable to find any precedent for termination of a contract because of security breach. We also have pointed out in that same memorandum that the burden of proof would rest with the Government in any termination for default resulting from a security compromise, and that proof of such a failure residing with contractor management could be difficult since we approve the contractor's procedures and grant clearances to its personnel.

~~ADMINISTRATIVE~~
INTERNAL USE ONLY

INTERNAL USE ONLY

SUBJECT: Security Provisions in Agency Contracts

For the reasons stated in this memorandum, i.e., the concept of termination for default because of a security violation and without a 10-day cure notice being new, and perceived difficulty in assigning the liability for the compromise to the contractor, we believe that it would be beneficial to circulate the proposed clause among some of our more sophisticated contractors for their views.

4. Recommendation: It is recommended that you sign the attached memorandum to the DCI and forward via the General Counsel.



Att

STATINTL

INTERNAL USE ONLY